

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

FILED  
U.S. DISTRICT COURT  
SAVANNAH DIV.

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SO. DIST. OF GA.

BARBARA S. O'NEAL,

Plaintiff,

v.

Case No. CV 407-034

GARDEN CITY, and RHONDA  
FERRELL, ANDY QUINNEY,  
Individually and in Their Official  
Capacity,

Defendant.

**ORDER**

Before the Court is Plaintiff's Motion for Voluntary Dismissal of her Complaint (Doc. 5). Defendants responded that they do not object to the Court's entry of a voluntary dismissal without prejudice, but ask this Court to impose conditions<sup>1</sup> on the Plaintiff pursuant to Fed. R. Civ. Proc. 41(a)(2) (Doc. 6).

We acknowledge that this matter is in its early stages of litigation. However, Defendants have taken efforts in this matter: (1) Defendants removed the action to this Court (Doc. 1); (2) Defendants answered the Complaint (Doc. 2); and (3) Defendants filed

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<sup>1</sup> Defendants ask the Court to impose as a condition of dismissal without prejudice, that should Plaintiff refile her claim in any court then Plaintiff shall pay for the costs in this action (e.g., the \$350 filing fee for the removal action, etc., but not attorney's fees).

a Motion to Dismiss (Doc. 3).<sup>2</sup>

Pursuant to Fed. R. Civ. Proc. 41(a)(2), “an action shall not be dismissed at the plaintiff’s instance save upon order of the court and upon such *terms and conditions as the court deems proper*.” (emphasis added). We recognize that the “basic purpose of Rule 41(a)(2) is to freely permit the plaintiff, with court approval, to voluntarily dismiss an action so long as no other party will be prejudiced.” Versa Products, Inc. v. Home Depot, USA, Inc., 387 F.3d 1325, 1327 (11th Cir. 2004) (citation omitted); see also Pontenberg v. Boston Scientific Corp., 252 F.3d 1253, 1260 (11th Cir. 2001) (stating that “[w]here the practical prejudice of expenses incurred in defending the action can be alleviated by the imposition of costs or other conditions, the district court does not abuse its discretion by dismissing the action without prejudice.”) (internal quotations omitted). Therefore, the Court having read Plaintiff’s Complaint, Defendants’ Answer, and Defendants’ Motion to Dismiss, IT IS HEREBY ORDERED that Plaintiff’s Complaint is dismissed without prejudice, though as a condition of the voluntary dismissal without prejudice, pursuant to Fed. R. Civ. Proc. 41(a)(2) and 41(d)<sup>3</sup>, should the Plaintiff refile an action based upon or

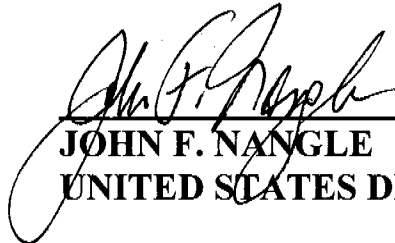
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<sup>2</sup> It is after Defendants filed a Motion to Dismiss that Plaintiff brought her Motion for Voluntary Dismissal. Prior to Plaintiff’s Motion (Doc. 5), the Court had not reached the merits of the Motion to Dismiss. Therefore, in light of the uncontested Motion for Voluntary Dismissal, Defendant’s Motion to Dismiss is now moot.

<sup>3</sup> Fed. R. Civ. Proc. 41(d) provides that “[i]f a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously

including the same claim against the Defendants in any court, Plaintiff shall pay Defendants' costs (e.g., the \$350 filing fee for the removal action, but not attorney's fees) in this action.

**SO ORDERED.**

  
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**JOHN F. NANGLE**  
**UNITED STATES DISTRICT JUDGE**

**Date: March 29, 2007**

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dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order."